ments thus enacted. The sole guide must be the Act itself'. The provision of s 23(1)(a) does not impose any condition relating to cause of action or the nature of the prayers being sought before the High Court can assume jurisdiction. In our opinion, the learned judge erred in law in refusing to give any meaningful interpretation to the statutory provision by concluding that it was a mere restatement of the principle underlying O 11 r 1 of the RHC 1980 based on English Law. As stated by Lord Selborne LC in *AG* v *Great Eastern Railway Co*[8] at p 479, 'It would, however, be contrary to sound principle to imply such a condition, not expressed in the clause, if the words, as they stand would be sensible and operative without it.' Indeed, Lord Russell, in *Evans* v *Bartlam*[8] at p 481 ruled that, 'it would be adding a limitation which the rule does not impose or re-writing of the section which Parliament had failed to do so.' By imposing a requirement that the money claim should not be tagged on the appellants' claim for the declaratory orders, the learned judge had in our view erred in law by imposing a non-existent condition to the operation of s 23(1)(b).

In the circumstances, the only relevant issue to be determined in both these cases is whether DKS is one of several defendants who have a place of business within the local jurisdiction of the High Court. If so, then the High Court shall have the necessary jurisdiction not only over DKS but also over the co-defendant ITC, notwithstanding that the latter is not within the jurisdiction. On the facts, there is no dispute that DKS has a place of business within the local jurisdiction of the High Court and that they are one of the several defendants in both cases under appeal. The registrar was accordingly correct in law in granting the order that he did, and in the result, these two appeals should in our opinion, succeed. We are also in agreement with Mr Pradhan that in the event of the ITC having been wrongly joined as a co-defendant, there is nothing to stop them from applying for both the actions to be struck off for misjoinder of parties.

For reasons discussed, we order that both the appeals be allowed with costs here and in the courts below. The order of the registrar is accordingly restored. Finally we order that the deposit be refunded to the appellants.

Appeals allowed.

Solicitors: *Skrine & Co*; *Shearn Delamore & Co*; *Drew & Napier*.

Reported by *Prof Ahmad Ibrahim*

Cohen Lorraine Philis & Anor v Public Prosecutor and another appeal

SUPREME COURT (KUALA LUMPUR) - CRIMINAL APPEAL NOS 67 AND 66 OF 1987
ABDUL HAMID LP, HASHIM YEOP A SANI CJ (MALAYA), LEE HUN HOE CJ (BORNEO), ABDOOLCADER AND MOHAMED YUSOFF SCJJ
21 AUGUST 1989

Criminal Law - Dangerous drugs - Trafficking in - Defence that appellants were drug addicts - Evidence to show that appellants were drug addicts - Whether defence available to appellants to rebut presumption that they were trafficking in drugs - Dangerous Drugs Act 1952, ss 2, 37(da), 39(a) & 39B

Words and phrases - 'Trafficking' - Dangerous Drugs Act 1952, s 2

In this case the appellants had been searched at the International Airport at Bayan Lepas, Penang when they were preparing to leave Penang. Drugs were found wrapped in plastic bags in the underpants of both the appellants. They were charged for trafficking in dangerous drugs under s 39(b) of the Dangerous Drugs Act 1952. The learned trial judge convicted the first appellant on the charge and she was sentenced to death. He found the second appellant guilty of the amended reduced charge under s 39A of the Act and sentenced him to life imprisonment and six strokes of the rotan. The appellants appealed. On appeal it was argued, inter alia, that the first appellant was an addict and not a trafficker. The public prosecutor also appealed in respect of the conviction and sentence on the second appellant, it being argued that it was not open to the trial judge in view of the wide definition of 'trafficking' to reduce the charge against the appellant, as the defence of personal addiction is not available to a person accused of the offence of trafficking.

Held, quashing the death sentence against the first appellant and substituting a life sentence and dismissing the appeal of the second appellant:

(1) The learned trial judge in this case had not given consideration to the first appellant's defence that she was in fact an addict and not a trafficker, particularly in the light of the evidence of the bodily deformations as a result of intravenous injections and the medical evidence called on her behalf. It was necessary therefore to give the appellant the benefit of the doubt and the conviction and sentence under s 39B of the Dangerous Drugs Act 1952 should be quashed and a conviction and sentence under s 39A of the Act for possession of the drugs substituted therefor.

(2) The appeal by the second appellant should be dismissed.

(3) The defence of personal consumption is available to a person accused of trafficking in dangerous drugs under the Dangerous Drugs Act but whether it will succeed would depend on the facts of the case. To say that the defence of personal consumption is never available is to render meaningless the law on statutory presumption as stated in *PP* v *Yuvaraj*[2] which has been accepted by our courts and become part of our law.

(4) In this case on the facts there was no merit in the grounds of appeal of the public prosecutor and the conviction and sentence of the second appellant under s 39A of the Dangerous Drugs Act is affirmed.

Cases referred to
1 *Teh Geok Hock* v *PP* [1989] 3 MLJ 162 (refd)
2 *PP* v *Yuvaraj* [1969] 2 MLJ 89 (folld)

Legislation referred to
Dangerous Drugs Act 1952 ss 2, 37(da), 39A, 39B

Karpal Singh (*Ong Choong Ghee* with him) for the appellants.
Ng Aik Guan (Deputy Public Prosecutor) for the respondent.

Cur Adv Vult

Abdul Hamid LP (delivering the judgment of the court): Cohen Lorraine Philis and Cohen Aaron Shelton were the appellants in SCCA No 67 of 1987 appealing against their conviction and sentence. The public prosecutor was the appellant in SCCA No 66 of 1987 in respect of the conviction and sentence of Cohen Aaron Shelton on a reduced charge under s 39A of the Dangerous Drugs Act 1952 ('the Act').

Cohen Lorraine Philis and Cohen Aaron Shelton were charged under s 39B(2)(a) of the Act before the learned judge of the High Court in Penang for possession of dangerous drugs, to wit 140.76g and 34.61g of heroin respectively on 9 February 1985 at the Singapore Airlines counter, International Airport, Bayan Lepas in the state of Penang. Hearing commenced on 10 August 1987 and on 1 September 1987 Cohen Lorraine Philis was found guilty of the charge and was sentenced to death by hanging. On the same day Cohen Aaron Shelton was found guilty of an amended reduced charge under s 39A of the Act and was sentenced to life imprisonment from date of arrest and six strokes of the rotan.

The prosecution's evidence was straightforward. An officer attached to the Cawangan Anti-Dadah at the International Airport (PW1) had information that two Caucasians, a male and a female, were carrying drugs. PW1 then went to the check-in counter of the Singapore Airlines and saw both appellants in Criminal Appeal No 67 of 1987 lining up to check in. PW1 identified himself as a police officer by displaying his authority card and asked for their passports and travel documents. PW1 then took them to the inspection room. A search was made on both the appellants separately. A female constable from the security unit of the international airport (PW2) made a search on the female Caucasian. As a result of the examination drugs wrapped in plastic packets were found in the underpants of both the appellants in Criminal Appeal No 67 of 1987.

In their defence both the appellants read their written statements from the dock. Cohen Lorraine Philis was the mother of Cohen Aaron Shelton. Both stated they were drug addicts and that the drugs were for their own consumption.

In respect of Cohen Lorraine Philis she stated that at the time of her arrest she needed 4 to 8g per day of heroin. The street value of heroin in Penang then (in 1985) was $12 per gramme. She came to Penang after receiving an inheritance of approximately NZ$10,000 at the end of 1984. She said that what she had when arrested was intended for her own personal consumption. She also said that she came to Penang as a result of a domestic quarrel with her de facto husband who physically assaulted her in a serious way. She was frightened and decided to come to Penang with her son, Cohen Aaron Shelton. The rest of the statement dealt with the unfortunate incidents with her de facto husband.

In his statement Cohen Aaron Shelton also admitted that he began smoking heroin at the age of 15 years. He also related the unhappy incidents between his mother and her de facto husband in Australia. According to him when they came to Penang in December 1984 he began to use heroin regularly and his addiction grew because heroin was cheap and readily available in Penang and his daily use increased accordingly. Within 48 hours of his arrest he began to suffer withdrawal from heroin and was taken to the Penang General Hospital.

Medical evidence was also adduced to support the defence of Cohen Lorraine Philis. The medical evidence were from one Dr Frazer McDonald (DW3), a psychiatrist attached to the Carrington Hospital, Auckland, New Zealand who recognized Cohen Lorraine Philis as a patient at a drug clinic in Auckland. According to DW3, Cohen Lorraine Philis was heavily addicted. Medical evidence were also obtained from one Dr Stella Yvette Dalton (DW4). DW4's experience included acting as consultant psychiatrist in the heroin maintenance clinics in London hospitals. In 1968 DW4 became director of addiction services for the Department of Health, New South Wales, Australia. In 1974 DW4 established community service for the health department and had been attending international conferences as an Australian expert on drug addiction. DW4 met Cohen Lorraine Philis for the first time in 1970 for treatment for drug addiction. DW4 testified that the appellant had been treated for drug addiction between 1970 and early 1981. DW4 also stated that she saw the appellant again in 1984, four times in all, and found that the appellant was still a chronic addict and was not properly treated.

In the case of Cohen Aaron Shelton the medical officer attached to the Penang General Hospital (DW7) corroborated the statement of Cohen Aaron Shelton that he was admitted to the General Hospital on 12 February 1985 after he complained of fever. The diagnosis was drug withdrawal. The appellant was discharged on 18 February 1987 after being treated by two doctors, Dr Han and Dr Aung.

A number of points were raised in the memorandum of appeal in Criminal Appeal No 67 of 1987. Among the points raised were the issue of joint trial, the alleged

irregularity in the body examination carried out on both appellants, the alleged break in the chain of evidence relating to the exhibits and the alleged misdirection on the part of the learned judge when considering the scars on the arms of Cohen Lorraine Philis.

We carefully considered all the points raised by Mr Karpal Singh for the appellants in Criminal Appeal No 67 of 1987. Except for one matter which we will shortly advert to we could not find that the other points raised, on a total view of the evidence, caused any miscarriage of justice or had sufficient merit to justify interference by us.

However with regard to the appeal by Cohen Lorraine Philis on the ground that she was in fact an addict and not a trafficker, we found that unfortunately the learned judge had not given the consideration to this aspect of the case, particularly in the matter of the bodily deformations that were exhibited with regard to intravenous injection marks on her arms and thighs as he did not refer to the photograph of the appellant in this connection and more particularly seemed to have been under the impression that these marks were the result of assault by the de facto husband in spite of the matter having been raised in the medical evidence adduced. In view of this we felt that it was necessary to give the appellant the benefit of the doubt and quashed the conviction and sentence under s 39B and substituted a conviction and sentence under s 39A of the Act for possession of the drugs and sentenced her to life imprisonment with effect from date of arrest.

The appeal by Cohen Aaron Shelton was dismissed.

Then we considered the appeal by the public prosecutor in respect of the conviction and sentence against Cohen Aaron Shelton on the reduced charge in Criminal Appeal No 66 of 1987.

This appeal was based on the substantial point raised by the public prosecutor that trafficking is defined specifically by s 2 of the Act to include 'carrying', 'keeping' and the like and that accordingly it was not open to the judge, in view of this definition, to reduce the charge as he did as such a plea of personal addiction to a charge of trafficking is not available to a person accused of such offence.

The crucial question is whether in a prosecution under s 39B of the Act an accused can put up the defence that the drugs found in his possession is intended for his own consumption and not for the purpose of trafficking. Hitherto deputy public prosecutors in every case have always asserted the proposition that because of the wide definition of 'trafficking' under the Act the defence that the drugs are for the accused's own consumption does not constitute a defence in law and should be rejected outright. Mr Ng repeated the same proposition before us. In our view that is not a correct proposition of law.

Despite the wide definition of the word 'trafficking' in the Act and as stated by this court in *Teh Geok Hock* v *Public Prosecutor*[1] that the definition sounds artificial and is not in accordance with the ordinary meaning of the word 'trafficking', it does not mean that the defence of own personal consumption can never be raised at all by evidence.

It is implicit in the judgment in *Teh Geok Hock*[1] that the defence of own personal consumption is available but whether it will succeed would depend on the facts of each case. In our view to say that the defence of personal consumption is never available is to render meaningless the law on statutory presumption as stated in *PP* v *Yuvaraj*[2] which has been accepted by our courts and become part of our law. Thus we cannot accept the point raised by the deputy public prosecutor in this regard in the light of the rebuttable presumption specifically provided for in s 37(da) of the Dangerous Drugs Ordinance.

Having also considered the factual aspects in the grounds of appeal, we found no merit and would accordingly dismiss the appeal in Criminal Appeal No 66 of 1987 and affirm the conviction and sentence on the respondent Cohen Aaron Shelton.

We wold however immediately add that we do indeed appreciate that the quantity of heroin found on the person of Cohen Lorraine Philis was not inconsiderable but we have substituted a conviction for possession under s 39A of the Act only in the wholly exceptional circumstances of this case for the reasons we have given in respect of the learned judge's consideration of the matter and in the light of the appellant's sordid history of addiction and background borne out by the medical evidence adduced. We would therefore like to make it very clear that our decision here rests wholly on the particular circumstances of this particular case and must not be taken as a licence for the general contention of personal consumption irrespective of the quantity of drugs involved.

Order accordingly.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*